

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS Nos 431,662 & 1091 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

PRAVINBHAI PRABHUBHAI PATEL

Appearance:

Mr.H.L.Jani, learned A.G.P. for Executive Engineer,
Magdalla Port.

MR RR MARSHALL for the claimant Pravinbhai Prabhubhai
Patel.

Mr.H.S.Mulia for MR RC JANI for The New India Assurance
Co.Ltd.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/02/2000

COMMON ORAL JUDGEMENT

1. The facts giving rise to the present Appeals are
as under:-

The claimant Pravinbhai, aged 21 years at the

relevant time, was working as an employee (daily wager) for a sum of Rs.14/- per day at Magdalla Port under the concerned Executive Engineer. His case is that on 12.1.82 at about 6.0 P.M. while he was being taken in a truck of the Port (registered in the name of the Executive Engineer of the said Port) he sustained fractures of tibia and fibula of both the legs. It has been stated that the driver Fatehsingbhai was driving the truck in a high speed. On account of sudden application of the brake, the plate of the diesel pump, which was loaded in the truck moved and dashed against his both the legs resulting into the fractures, as aforesaid. It is the case of the claimant Pravinbhai that the truck was being driven in a rash and negligent manner. On account of the injuries, as aforesaid, he was taken to the Civil Hospital, Surat where he remained as an indoor patient. He has stated that he was earning Rs.450/- P.M. and as a result of this accident, he sustained permanent disability and was no more in a position to do the work which he did prior to the accident. He claimed the compensation amounting to Rs.50,000/-.

2. The aforesaid claim was contested by the Executive Engineer of the Port as also the Insurance Co. by denying the averments made in the claim petition and the liability to pay the compensation was also denied. The concerned Executive Engineer admitted the incident but the case was set up that whereas the injury was caused by the plate of the diesel pump, the Motor Accident Claims Tribunal had no jurisdiction to entertain such an Application. Plea was also taken that the claimant had boarded the truck in a clandestine manner without the permission of the driver or the Dredging Master Dharamsinhbhai, while it has been admitted that there was a heavy plate which moved slightly because of the application of the brake. It has been contended that the driver of the truck did not know that the claimant had entered the body of the truck. It has been stated that the claim was highly exaggerated. The Insurance Co. has also contested the claim by saying that the claimant was an unauthorised and gratuitous passenger in the truck and, therefore, the Insurance Co. was not liable to pay any compensation. In the alternative, the Insurance Co. also contended that the claimant was working as a labourer of the Executive Engineer and, therefore, the liability was limited only to the extent of the liability under the Workmens' Compensation Act. Thus, the employer and the owner of the truck as well as the Insurance Co. both denied the claim of the claimant and also denied the liability for the payment of the compensation. A baseless plea has also been taken that the driver was not

holding transport licence for driving the truck and, therefore, the Insurance Co. was not liable.

3. On the basis of the pleadings, as aforesaid, the Motor Accident Claims Tribunal framed the following issues:-

"(1) Whether petitioner proves that the accident occurred because of rash and negligent driving of truck No.GTT/5563 by driver Fatehsingbhai Jesingbhai and petitioner was caused fractures and injuries by such rash and negligent driving?

(2) Whether petitioner is entitled to compensation of the amount of Rs.50,000/-?

(3) Whether opponent No.1 is liable for the tortious act of driver Fatehsingbhai Jesingbhai?

(4) What is the extent of the liability of opponent No.2, insurance company?

(5) What award?"

4. The learned A.G.P. Mr.Jani has made reference to the statements of the claimant Pravinbhai Exh.36, driver of the truck Fatehsingbhai Exh.41 and the Dredging Master Dharmsingbhai Exh.42. Having heard learned counsel for both the sides and having gone through the evidence available on record, this Court finds that the truck of the Port was being taken from Port to Surat, the Dredging Master Dharmsingbhai was sitting in the side of the driver in the cabin and the claimant was standing behind the cabin in the body of the truck. The claimant had to do colouring work in the ship also alongwith the work of loading and unloading the truck. It is established that the plate was taken out from the ship and was being taken to Surat. Plate of the diesel pump weighed about 4 to 5 tons. Dredging Master Dharmsingbhai had filed the F.I.R. Exh.23. In this F.I.R. he did not state that the truck was proceeding to Surat, but he has admitted the fact that the claimant Pravinbhai was in the truck. It was not disclosed in the F.I.R. by Dharmsingbhai that the claimant Pravinbhai had boarded the truck without the permission of the driver in a clandestine manner. It has been rightly held on the basis of the evidence on record by the M.A.C.Tribunal that the claimant was in the body of the truck as an employee of the Port and he was being taken as a labourer in the truck for the purpose of unloading the plate and in the opinion of this court, the Tribunal has rightly held that the claimant was taken in the truck as an employee working under the Executive Engineer for the purpose of work of unloading.

5. It is also clearly established from the evidence on record, as has been discussed by the Tribunal, that there was a sudden application of brake and it is on account of this sudden application of brake that the heavy plate moved and dashed against the legs of the claimant resulting into injuries, as aforesaid. The factum of the sudden application of the brake is not disputed and that the claimant had shouted and thereafter the truck was stopped. The driver Fatehsingbhai failed to explain as to why the brake was suddenly applied, although an admission has been made suggesting that the brake had to be applied to save the cow. In any case, there is no basis to disturb the finding that the accident occurred only because of rash and negligent driving of the truck by driver Fatehsingbhai.

6. It stands established that the claimant sustained bilateral compound fractures of tibia and fibula of both the lower limbs on account of the dashing of the plate and was immediately taken to the Civil Hospital, Surat where he remained as an indoor patient and he was plastered and even after three months, the plaster bandage was affixed again. He remained confined to bed for about 6 months and till the date of the evidence, he was also not in a position to do any work. On this count, the Tribunal has awarded the compensation of Rs.10,000/- for pain, suffering and loss of amenities of life etc. In the opinion of this Court, this amount of Rs.10,000/- on this count cannot be said to be excessive or even on higher side. On the contrary it appears to be on the lower side only.

7. It is also established that the claimant could not work at least for a period of 6 months. Ofcourse fractures had united as per the case papers but a note was made on 28.4.82 that the plaster had been broken at home and he had walked down when he was examined on 28.4.82 but subsequently X-ray was taken and a note was made in the case papers of 9.6.82 that on taking X-ray fractures had united. The Tribunal had, therefore, concluded that the claimant could not work at least for 6 months and whereas he was getting Rs.14/- per day, his monthly income come to Rs.420/- and he should be awarded compensation of Rs.420/- X 6 = Rs.2,520/- for loss of wages. This finding, in the opinion of the court, does not warrant any interference. A sum of Rs.600/- granted against the loss of wages of the attendant and other expenses and Rs.400/- only against the medicines is quite reasonable and there is no scope of interference with the awarding of these amounts.

8. Dr.Shrikant Shah Exh.34, who had examined the claimant on 9.7.83, had found that the fracture of left tibia had united with mal union and the angular deformity was 17 degree and the fracture of the right tibia had joint with mal union with angular deformity of 5 degree. Wasting of thigh muscles of both the lower limbs by half inch had been caused. According to Dr.Shrikant the changes of osteo arthritis had not set in. Dr.Shah assessed the permanent partial disability at 10% for both the lower limbs and that the claimant did find difficulty in doing labour work by lifting weight for longer period. The Tribunal has concluded that it was a case of permanent partial disability of 10% reducing his earning capacity by 10% and on that basis pecuniary loss of Rs.504/- per annum based on the total annual income of Rs.5040/- has been computed. After applying multiplier of 15 the compensation of Rs.7,560/- has been awarded against future pecuniary loss. This amount is also found to be just and reasonable and does not warrant any interference. The Tribunal has in all awarded an amount of Rs.21,080/-.

9. I called upon the learned counsel for the claimant as to whether any Cross Appeal had been filed or not. But neither any Cross Appeal is listed on the Board nor he is in a position to make any statement about it.

10. In these three Appeals i.e. First Appeal No.662/84 filed by the Executive Engineer of Magdalla Port, First Appeal No.431/84 filed by the Executive Engineer in his personal capacity and First Appeal No.1091/84 filed by the New India Assurance Co.Ltd., just and reasonable award, as aforesaid, has been challenged. Whereas the appellants in each of these three cases have failed to prove the case set up by them and it stands established on record that the claimant was the employee of the Port, he sustained injuries, as aforesaid, while he was being taken for duty and it was on account of the rash and negligent driving that the claimant had sustained the injuries and that at the time when he sustained the injuries, he was travelling in the truck in the course of his employment and further that the vehicle was registered in the name of the Executive Engineer, who was the owner and whereas they have failed to prove that the driver was not having the licence of motor vehicle, this Court does not find any ground to interfere with the award, as has been passed by the Tribunal. The Insurance Co.also could not be absolved of its liability by saying that the accident had been caused because of the dashing of the plate against the legs of the claimant and that

the vehicle as such had not made the accident. In the facts and circumstances of these cases, this Court does not find any ground whatsoever to interfere with the award passed by the M.A.C.Tribunal impugned in these three Appeals and the impugned award does not warrant any interference at the instance of any of the three appellants. Accordingly all these 3 Appeals fail and are hereby dismissed. In the facts and circumstances of these cases, the parties are left to bear their own costs.